IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 886 OF 2004

Shri Maruti Devasthan Public Trust
through Trustee Shriram M.Satbhai
and others. ... Appellants.

Versus.

Deopram Pandurang Satbhai & ors. ... Respondent.

Shri V.D.Bhavsar for the Appellant.

Shri N.J.Patil for the Respondents Nos.1 to 4.

CORAM : ABHAY S. OKA, J.

DATED : 27th April, 2005.

P.C.:

1. Heard Shri Bhavsar, the learned Advocate for the Appellants. The Appellants are the original Plaintiffs. The suit is filed by the Appellants in their capacity as Trustees of a Public Charitable Trusts duly registered under the Bombay Public Trust Act, 1950. The suit relates to agricultural land. The suit is for possession. It is not in dispute that the Agricultural Lands Tribunal under the Bombay Tenancy and Agricultural Land Act, 1948, held that the Respondents Nos.1 to 4 (original Defendants Nos.1 to 4) are deemed purchasers under section 32G of the said Act of 1948. The certificate under section 32M has been issued in favour of the Respondents Nos.1 to 4. The order under section 32G of the said Act of 1948 is confirmed by this Court.

2. The Appeal Court dismissed the suit filed by the

Appellants and the decree of the trial Court was confirmed in Appeal. The learned Advocate for the Appellant submitted that under Bombay Act II of 1863 the suit land was exempted from payment of land revenue. He submitted that in view of the said exemption the provisions of the said Act of 1948 were not applicable to the suit land. He pointed out that a declaration was prayed for in the suit that the orders passed by the authorities under the said Act of 1948 are null and void. He submitted that the trial Judge held that his jurisdiction to hear and decide the suit was not barred. He submitted that the trial Court framed an issue on the basis of the plea of resjudicata. However, the Appellate Court has not framed point for determination on the issue of resjudicata and therefore, the findings of the Appellate Court in bad-in-law.

3. I have considered the submissions. Even assuming that there is in exemption in favour of the Appellants from payment of land revenue, that does not exclude applicability of the said Act of 1948 to the suit land. The original Defendants Nos.1 to 4 have been held to be deemed purchasers by the orders passed by the Tribunal under the said Act of 1948 and the same has attained finality as the same has been confirmed by this Court. In my view the Courts below were right in holding that unless a case for exemption is made out under section 88B of the said Act 1948 there cannot be any exemption

in favour of the Appellants.

4. So far as the second contention is concerned, a perusal of the Judgment of the Appellate Court shows that though point for determination is not framed on the basis of the plea of resjudicata, in paragraph 9 the Appellate Court has made elaborate discussion on the said issue. Mere failure to frame point for determination will not vitiate the Judgment of the Appellate court unless it is shown that there is a substantial failure of justice. As the said issue is decided by elaborate discussion, there is no failure of justice. The trial Court held that the issue regarding the right of the Defendants Nos.1 to 4 to purchase the suit land has attained finality in view of the confirmation of the decision of the Tribunal under the said Act of 1948 by this Court. Even assuming that the principles of resjudicata are not applicable, there is no merit in the case made out by the Appellants regarding exemption from the applicability of the said Act.

5. At this stage, the learned Advocate appearing for the Appellants invited my attention to section 89 of the said Act of 1948. On a plain reading of the said section, the same will not help the Appellants in establishing their case that the provisions of the said Act 1948 are not applicable. The learned Advocate has

also referred to the extract of revenue record placed on record. On the basis of the revenue record, it cannot be concluded that the provisions of the said Act of 1948 are not applicable to the suit land.

5. In view of the concurrent findings recorded by both the Courts below, no substantial question of law arises. The Second Appeal is dismissed with no order as to costs.

Judge.